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Thomas Navin
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Independent Audits Required Under Section 64.904(a) of the
Commission's Rules

Dear Mr. Navin:

AT&T Inc. and BellSouth Corporation ("the companies") hereby request that the FCC make an interpretive rule change to allow companies to meet the biennial financial audit (also referred to as the "CAM audit") requirement under section 64.904(a) of the Commission's rules, 47 C.F.R. § 64.904(a), by obtaining two separate annual financial audits covering the requisite two year period and filing the two separate audit reports biannually.¹ For the Commission's convenience, the companies have attached a redlined version of proposed modifications to clarify the language of section 64.904. The Commission may make an interpretative rule change,² such as this, outside the notice and comment requirements of the Administrative Procedures Act.³ All entities subject to the audit requirement would still file biannually under the proposed change, but this non-substantive revision would allow each entity to file either a) a single audit report covering a two-year period, or b) two annual audit reports contained in a single filing. This approach provides the Commission with a functionally equivalent audit to what is currently required under the Commission's rules while alleviating a number of unnecessary administrative burdens currently imposed on carriers subject to the audit

¹ It should be noted that this approach is consistent with the Commission's financial audit requirement that applied prior to adoption of the Phase I Order in the Comprehensive Accounting Review, which changed the yearly audit filing requirements to a biennial filing. See *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, CC Docket No. 99-253, *Report and Order*, 15 FCC Rcd 8690, ¶ 12-13, 15 (2000) ("Phase I Order").

² "Interpretive rules," are those rules that "merely clarify existing law or regulations." *American Ambulance Service, Inc. v. Sullivan*, 911 F.2d 901, 907 (3rd Cir. 1990) (citations omitted); see also *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 599 (D.C. Cir. 1973) (interpretive rules "describe[] the agency's view of the meaning of an existing statute or regulation.>").

³ 5 U.S.C. § 553(b) (exempting "interpretive rules" from notice and comment requirements). See *U.S. Telecom Ass'n v. FCC*, 400 F.3d 29, 34 (D.C. Cir 2005).

requirements. Adoption of the proposed changes is consistent with the intent of the CAM audit requirements⁴ and will promote the public interest.⁵

The original purpose of the Commission's adoption of a biennial (rather than an annual) financial audit requirement was to provide carriers with some regulatory relief through the expected efficiencies gained when certain audit work could be performed once every two years rather than each year.⁶ However, the actual application of the biennial audit requirements often hampers the realization of the Commission's streamlining intent. Pursuant to section 64.904(c) of the Commission's rules, the biennial financial audit must provide "a positive opinion on whether the applicable data shown in the carrier's *annual* report required by § 43.21(e)(2)" is consistent with the Commission's rules and related orders.⁷ According to Ernst & Young LLP, the independent auditor engaged to perform AT&T's financial audits, the applicable audit standards essentially call for the performance of two *annual* financial audits to provide the positive opinion required under the Commission's rules because each report it is auditing only covers one year.

Although the nature and scope of audit work performed with respect to the two separate annual reports would generally be the same whether audited once to cover the two-year period or separately each year, certain administrative considerations strongly favor providing carriers with the option of filing separate annual independent auditor reports. The existing rules create timing problems requiring the independent auditors and the carrier to complete numerous tasks⁸ for two separate annual reports at one time, i.e., after the end of the biennial financial audit's two-year engagement period. Although these tasks are already performed once for the annual report associated with the first year of the biennial financial audit, a strong likelihood exists under the applicable audit standard that some, if not all, of these tasks would need to be performed again for this same report at the end of the second year of the biennial financial audit. This repetitive effort results from the unusual scenario created by the Commission's rules requiring auditors to provide a positive opinion on a report that was filed one year earlier. The extra work, in addition to that required for the annual report associated with the second year of the biennial financial

⁴ The purpose of the financial audit is for the Commission to ensure that "the carrier's annual report required by § 43.21(e)(2) of [the Commission's rules] present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-11, the Commission's Accounting Safeguards proceeding in CC Docket No. 96-150 and the Commission's rules and regulations including §§ 32.23 and 32.27... and § 64.901 and § 64.903 in force as of the date of the auditor's report." 47 C.F.R. 64.901(c).

⁵ If the Commission believes that it lacks the authority to issue the requested interpretation, AT&T and BellSouth request that the Commission waive section 64.904(a) to the extent necessary to allow the biennial filing of two separate one-year audits. See 47 C.F.R. § 1.3 ("Any provision of the [Commission's] rules may be waived by the Commission...if good cause therefore is shown.").

⁶ See *Phase I Order* ¶ 13 ("[The Commission] fully anticipate[s] that [the biennial] attestation procedure will be a reduction in burden from the present annual financial audit requirement.").

⁷ 47 C.F.R. § 64.904(c) (emphasis added).

⁸ For example, making annual adjusting and closing entries to the books of account; performing multiple runs of the cost allocation system; making ARMIS adjustments; filing ARMIS reports, etc. and the auditor's related review of these items.

audit, makes it exceedingly difficult for AT&T and BellSouth to meet the FCC's filing deadline without having to expend an inordinate amount of administrative effort and resources.

For the aforementioned reasons, the companies request that the FCC make a minor, non-substantive rule change to permit the option of obtaining separate annual financial audits and filing separate independent auditor reports biannually. Please feel free to contact us if you have any questions or would like to discuss this further.

Sincerely,

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Proposed Modifications to
47 C.F.R. § 64.904

§ 64.904 Independent audits.

(a) Each carrier required to file a cost allocation manual **shall make an audit report filing every two years and may** elect to either have an attest engagement(s) performed by an independent auditor ~~every two years~~ covering the prior two year period, or have a financial audit(s) performed by an independent auditor ~~every two years~~ covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual **and the carrier may file either a) a single audit report covering each of the prior two years, or b) two annual audit reports in a single filing covering each of the prior two years.**

(b) The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to § 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96-150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Enforcement Bureau.

(c) The ~~biennial~~ financial audit shall provide a positive opinion on whether the applicable date shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96-150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Enforcement Bureau. The report of the independent auditor shall be filed at the time that the carrier files the annual reports required by § 43.21(e)(2) of this chapter.